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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

KEVIN LAMONT GADDY,

Defendant and Appellant.

D073242

(Super. Ct. No. SCD269283)

APPEAL from a judgment of the Superior Court of San Diego County,
Steven E. Stone, Judge. Affirmed.

Ashley N. Johndro, by appointment of the Court of Appeal, for Defendant and
Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, Michael Pulos and Seth M.
Friedman, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Kevin Lamont Gaddy appeals from a judgment of conviction after a jury found him guilty for failing to register as a sex offender. Before trial, he moved to exclude any evidence that he was on parole when he was arrested for the crime at issue. The court denied the request, finding that the probative value of evidence of his parole status was not substantially outweighed by the danger of undue prejudice.

Evidence of a defendant's criminal history always creates some risk of prejudice, but here the danger was not substantial given facts relevant to the alleged crimes that would necessarily be presented to the jury. On the other side of the ledger, the parole status amounts to relevant contextual evidence with considerable probative value relating both to Gaddy's knowledge of the registration requirements and his willfulness in ignoring the requirements, the two critical issues at trial. We thus agree with the trial court that the danger of prejudice resulting from knowledge of his parole status did not substantially outweigh the probative value of that evidence. We reject defendant's additional evidentiary claim and note that even if the court erred, any error was harmless. The record here contains ample, straightforward evidence that Gaddy was aware of the deadline for registration and willfully decided not to comply. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Gaddy was convicted of a crime in 2004 requiring him to register as a sex offender for the rest of his life. Twice since he failed to register, and he pleaded guilty to a misdemeanor for each violation.

Gaddy was on parole for an unrelated drug crime in August 2016 when he moved into a drug-treatment home in Spring Valley as part of his parole conditions. Shortly

after moving into the facility, he registered with the Sheriff's department. Registration entailed complying with 22 requirements, including that if he were to "become transient, [he would] have five working days within which to register in person with the law enforcement agency where I am physically present as a transient." Gaddy reviewed these requirements with his parole agent.

About two months later, Gaddy left the treatment home. Two days after leaving he spoke with Anabel Anderson, his parole agent, informing her that he was living as a transient in downtown San Diego. She told him to update his registration that week and to keep his ankle unit GPS (Global Positioning System) tracker, which he wore as a condition of his parole, properly charged.

Ten days later on October 19, Anderson was notified that Gaddy's GPS device was not functioning because its battery had died. She tried calling him on his cell phone but could not reach him. Another parole agent unsuccessfully attempted to locate him. The next day, when Anderson went looking for Gaddy herself, she found and arrested him. By then he had charged his GPS tracking device, but it had been off for 26 hours. She arrested him less than a mile away from a police station where he could have registered.

Gaddy was charged with one felony count of failing to register as a sex offender within five business days of becoming a transient and leaving a registered residence address. (Pen. Code, § 290.018, subd. (b).) Two prison priors and a strike prior were also alleged. (Pen. Code, §§ 667.5, subd. (b), 668 [prison priors]; §§ 667, subds. (b)–(i), 668, 1170.12 [strike prior].)

After Gaddy agreed to a bifurcated bench trial on the priors, the matter proceeded to jury trial on the felony count. Before trial he filed motions in limine to exclude two types of evidence. First, he moved to exclude evidence of his prior convictions for failing to register as a sex offender. Second, he moved to exclude evidence of his parole status, contending this was improper propensity evidence and that, under Evidence Code section 352, its probative value was substantially outweighed by the probability it would cause undue prejudice.¹ The trial court denied both motions, and the prosecution relied on this evidence throughout the trial.

After direct examination of Agent Anderson, the People's first witness, the prosecution informed Gaddy that it had discovered new evidence favorable to his defense. Gaddy moved for a mistrial on the grounds that he had been prejudiced by the late discovery. The court denied the motion.

The jury found Gaddy guilty of failing to register as a sex offender under Penal Code section 290.018, subdivision (b). He later admitted all three priors. The court sentenced him to the low term of 16 months, doubled on account of his strike prior, plus one additional year for each of his prison priors, for a total of four years, eight months in state prison.

¹ All further statutory references are to the Evidence Code unless otherwise indicated.

DISCUSSION

1. *Legal Standards*

The trial court has discretion to "exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (§ 352.) Where evidence of past crimes is at issue, if "there is any doubt, the evidence should be excluded." (*People v. Thompson* (1980) 27 Cal.3d 303, 318 (*Thompson*).) We review rulings regarding admissibility under sections 352 and 1101 for abuse of discretion. (*People v. Merriman* (2014) 60 Cal.4th 1, 74; *People v. Foster* (2010) 50 Cal.4th 1301, 1328.) The trial court abuses its discretion when it exercises its discretion in an "arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice." (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9–10.)

2. *The Trial Court Did Not Err In Admitting Defendant's Parole Status*

Gaddy argues the trial court abused its discretion in admitting evidence that should have been excluded under section 352.² The People contend that because the jury was certain to hear that he was convicted of a crime requiring him to register as a sex offender, evidence of his current parole status would necessarily have minimal, if any, prejudicial impact. They characterize the parole status evidence at issue as "stage-setting background" that served inter alia "to inform the jury why agent Anderson and the other parole agents had a role in this case."

Evidence of a defendant's prior crimes, including parole status, typically creates a risk of prejudice. (*People v. Griffin* (1967) 66 Cal.2d 459, 466.) Nevertheless, on the facts of this case the admission of Gaddy's parole status did not present a *substantial* danger of *undue* prejudice. Given the nature of the crime with which he was charged, the jury would necessarily be told that Gaddy had been convicted of a crime subjecting him to certain registration requirements. Jurors were certain to hear that Gaddy had been informed of the registration requirements by law enforcement agents, responsible for monitoring him. The jury would also learn that Gaddy was arrested by an agent, who went looking for him after she was notified that his GPS tracker was not functioning because its battery had lost charge. Given that those facts would necessarily be presented to the jury, the additional knowledge that the agents involved were *parole* agents, and that the GPS information was part and parcel of *parole* compliance, does not amount to substantial danger of undue prejudice.

² Gaddy also appears to contest whether section 1101, subdivision (a) prohibits the admission of the evidence of his parole status. The parties dispute whether Gaddy forfeited this argument when he made his objection below on relevance and section 352 grounds but failed to specifically mention section 1101. Because of the seriousness of the risk of prejudice from improper admission of character evidence, however, as well as the relative similarity of the analysis of evidentiary relevance generally and analysis under section 1101 specifically, we do not require a defendant's objection to specifically cite section 1101 if the trial court is otherwise sufficiently alerted to the issue. (See *People v. Clark* (1992) 3 Cal.4th 41, 124; *People v. Williams* (1988) 44 Cal.3d 883, 906.) Here, the record shows the trial court was fully aware of the issue, and accordingly Gaddy has not waived the argument. Regardless, as we discuss below with respect to the analysis under section 352, the evidence of his parole status was relevant to proving knowledge and willfulness, which renders the evidence admissible under section 1101, subdivision (b), even if it were otherwise inadmissible under subdivision (a).

In the usual case, evidence of a defendant's parole status tells the jury that the defendant is an ex-felon, and carries with it the real possibility that jurors will assume defendant is guilty of the new charge because he was previously convicted of a different offense. Here, however, the crime with which the defendant was currently charged—failing to register as a sex offender—already informed jurors that defendant had been previously convicted of a serious offense. Adding the fact that he was *currently* on parole contributes little of significance in terms of prejudice. Given these unique factual circumstances, the danger of undue prejudice was not substantial.

Gaddy argues that "because the jury did not know [he] was on parole for a *drug offense*, the jurors' judgment may have been clouded." But Gaddy was not, as he suggests, prohibited from addressing the parole issue himself. If he believed the danger of undue prejudice would have been mitigated by evidence that he was on parole for a drug offense wholly unrelated to his sex offender registration requirement, he was at liberty to offer that evidence.

Gaddy also claims that the danger of undue prejudice was exacerbated by the prosecution's failure to provide important discovery until trial. At the outset of trial, the prosecution argued the evidence would show that Gaddy stopped charging his GPS tracker on the morning of October 19, shortly after the deadline for registering. According to Gaddy, the prosecution implied that his decision to stop charging the battery altogether proved willfulness in disregarding the requirements. But late-discovered evidence showed that while Gaddy had failed to charge the GPS tracker on October 19, he did in fact charge it the following morning. Relying on this evidence,

Gaddy contends "[t]he jury could reasonably have concluded [he] was making every effort to comply with the law, but had difficulty charging his GPS device twice a day, for two hours each time, as a transient living on the streets." But he never explains how the evidence showing that he later charged his GPS tracker bears on the danger of admitting evidence of his parole status. And he fails to articulate how knowledge of his parole status—as opposed to his status as a sex offender—made it more likely the jury would improperly reject his claim that he did not knowingly fail to register.

We accordingly conclude there was no abuse of discretion in finding that the danger of undue prejudice from admission of Gaddy's parole status did not substantially outweigh its probative value.

3. *The Trial Court Properly Admitted Evidence of Defendant's Previous Convictions for Failure to Register*

Gaddy argues the trial court erred in admitting evidence of his two prior convictions for failure to register. He contends that, like the evidence of his parole status, the probative value of the prior convictions was substantially outweighed by the substantial danger of undue prejudice. (See § 352.) He also argues that the evidence was inadmissible under section 1101, subdivision (a), which generally prohibits character evidence to prove conduct.

The People argue the convictions had significant probative value because they were relevant to Gaddy's knowledge of, and lack of mistake regarding the registration requirements. They further argue that the evidence was properly admitted under section

1101, subdivision (b), for evidence bearing on knowledge or absence of mistake. They also note that the court provided an appropriate limiting instruction to the jury.³

We agree that the convictions are relevant for assessing whether Gaddy had knowledge of the registration requirements and the absence of mistake. Section 1101, subdivision (b) expressly provides for admission of prior crimes evidence relevant to prove knowledge or absence of mistake where the evidence would be otherwise prohibited by subdivision (a). Here, the prior convictions were rendered for failure to register and are thus manifestly similar to the charged crime (see *Thompson, supra*, 27 Cal.3d at pp. 319–321), and they were critical to the core issues at trial. Gaddy had indisputably failed to register by the relevant deadline, which meant the only issues at trial were whether he had knowledge of the requirement and whether his failure was willful or due to mistake. The priors were relevant to both issues, showing that, having pled guilty to failing to register on two previous occasions, he was more likely aware of the registration requirements and less likely to have accidentally failed to register.

We also agree that the probative value of the evidence on these points was not substantially outweighed by a substantial danger of prejudice. Unlike the evidence of his parole status, which presents a closer question, here the evidence's significant probative

³ The court instructed the jury not to "consider this evidence for any other purpose except for the limited purpose of determining the defendant's knowledge or lack of mistake" and not to "conclude from this evidence that the defendant has a bad character or is disposed to commit crime."

value regarding Gaddy's knowledge and lack of mistake comfortably outweighs the danger of undue prejudice.

4. *Even If the Court Erred, the Error Was Harmless*

While we conclude the trial court did not err in admitting evidence of Gaddy's parole status or his prior convictions for failure to register, we briefly note that even if the court had erred, any error was harmless. Here, Gaddy unquestionably failed to timely register. He signed his previous registration form indicating he was aware of the registration requirement, and he was personally informed that he had to register within five days of becoming transient, twice before leaving the recovery home and then again two days after he left. Gaddy was arrested within a mile of a location where he could have registered. His offered justification—that the requirements are complex and he was previously familiar with thirty-day deadlines, not five-day—is unconvincing. On those facts, the evidence shows that he knew he had to register and declined to do so. He has thus failed to show a reasonable probability that the verdict would have been more favorable had the court granted either of the motions in limine at issue here. (See *People v. Watson* (1956) 46 Cal.2d 818, 836; see also *People v. Hicks* (2017) 17 Cal.App.5th 496, 508.) Likewise, he has failed to show cumulative error. (See *People v. Mireles* (2018) 21 Cal.App.5th 237, 249.)

DISPOSITION

The judgment is affirmed.

DATO, J.

WE CONCUR:

BENKE, Acting P. J.

O'ROURKE, J.